

IN THE MATTER OF:)

JASPER COUNTY/TRI-STATE)
MINING AREA SITE,)
Jasper County, Missouri,)

E.I. DUPONT DE NEMOURS)
AND COMPANY,)
Wilmington, Delaware,)

UNITED STATES STEEL)
CORPORATION,)
Trenton, New Jersey,)

KELLOGG BROWN & ROOT, INC.)
Houston, Texas,)

Respondents.)

03 MAR 10 AM 11:05

ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

AGREEMENT

U.S. EPA Region VII
Docket No. CERCLA-07-2002-0051

PROCEEDING UNDER SECTION
122(h)(1) OF CERCLA,
42 U.S.C. §9622(h)(1), and
SECTION 7003 of RCRA,
42 U.S.C. §6973.

I. JURISDICTION

1. This Agreement is entered into pursuant to the authority vested in the Administrator of the U.S. Environmental Protection Agency ("EPA") by Section 122(h)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. §9622(h)(1), which authority has been delegated to the Regional Administrators of the EPA by EPA Delegation No. 14-14-D and redelegated to the Director, Superfund Division of EPA Region VII by Regional Redelegation No. R14-14-D, dated January 1, 1995. This Agreement is also issued under the authority vested in the Administrator of EPA by Section 7003(a) of the Solid Waste Disposal Act of 1976, commonly referred to as the Resource Conservation and Recovery Act, as amended by the Hazardous and Solid Waste Amendments of 1984 (hereinafter referred to as RCRA), 42 U.S.C. §6973(a). The authorities vested

in the Administrator pursuant to RCRA have been further delegated to the EPA Regional Administrators by EPA Delegation Nos. 8-22-A, dated March 20, 1985 and 8-22-C, dated March 20, 1985 and redelegated to the Director for Air, RCRA, and Toxics Division by Regional Delegation Nos. R7-8-22-A and R7-8-22-C dated January 1, 1995. This Agreement is also entered into pursuant to the general authority of the Attorney General of the United States to compromise and settle claims of the United States, which authority, in the circumstances of this settlement, has been delegated to the Chief of the Environmental Enforcement Section, Environment and Natural Resources Division, U.S. Department of Justice (DOJ). The Missouri Department of Natural Resources (MDNR) enters into this Agreement pursuant to Section 260.530, RSMo and pursuant to the authority provided to the states under Section 107 of CERCLA, 42 U.S.C. §9607.

2. This Agreement is made and entered into by EPA, MDNR and Settling Parties. Each Settling Party consents to and will not contest the authority of the EPA or the MDNR to enter into this Agreement or to implement or enforce its terms.

II. BACKGROUND

3. This Agreement concerns the Jasper County Superfund Site ("Site") located in Jasper County, Missouri. The Site is a facility as defined by Section 101(9) of CERCLA, 42 U.S.C. §9601(9).

4. In response to the release or threatened release of hazardous substances at or from the Site, EPA undertook response

actions at the Site pursuant to Section 104 of CERCLA, 42 U.S.C. §9604, and may undertake additional response actions in the future. The MDNR may undertake operation and maintenance actions in the future.

5. In performing response actions at the Site, EPA has incurred response costs and will incur additional response costs in the future. The MDNR may incur response costs in the future.

6. The Settling Parties are responsible parties pursuant to Section 107(a) of CERCLA, 42 U.S.C. §9607(a), and are jointly and severally liable for response costs incurred and to be incurred at the Site.

7. EPA, the MDNR, and the Settling Parties recognize that this Agreement has been negotiated in good faith and that this Agreement is entered into without the admission or adjudication of any issue of fact or law. The actions undertaken by Settling Parties in accordance with this Agreement do not constitute an admission of any liability by any Settling Party. Settling Parties do not admit, and retain the right to controvert in any subsequent proceedings other than proceedings to implement or enforce this Agreement, the validity of the facts or allegations contained in this Section.

III. PARTIES BOUND

8. This Agreement shall be binding upon EPA, the MDNR, and the Settling Parties and their successors and assigns. Any change in ownership or corporate or other legal status of a Settling Party, including but not limited to any transfer of

assets or real or personal property, shall in no way alter such Settling Party's responsibilities under this Agreement. Each signatory to this Agreement certifies that he or she is authorized to enter into the terms and conditions of this Agreement and to bind legally the party represented by him or her.

IV. STATEMENT OF PURPOSE

9. By entering into this Agreement, the mutual objective of the Parties is to avoid difficult and prolonged litigation by allowing Settling Parties to make a cash payment to resolve their alleged civil liability under Sections 106 and 107 of CERCLA, 42 U.S.C. §§9606 and 9607, under Section 7003 of RCRA, 42 U.S.C. §6973, and under comparable state law, for injunctive relief with regard to the Site and for response costs incurred and to be incurred at or in connection with the Site, subject to the reservations of rights included in Section IX (Reservation of Rights).

V. DEFINITIONS

10. Unless otherwise expressly provided herein, terms used in this Agreement which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Agreement or in any appendix attached hereto, the following definitions shall apply:

- a. "Agreement" shall mean this Agreement and any attached appendices. In the event of conflict between

this Agreement and any appendix, the Agreement shall control.

b. "CERCLA" shall mean the Comprehensive Environmental Response Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§9601, et seq.

c. "Day" shall mean a calendar day. In computing any period of time under this Agreement where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day.

d. "EPA" shall mean the United States Environmental Protection Agency and any successor departments, agencies, or instrumentalities of the United States.

e. "Interest" shall mean interest at the rate specified for interest on investments of the Hazardous Substance Superfund established by 26 U.S.C. §9507, compounded on October 1 of each year, in accordance with 42 U.S.C. §9607(a).

f. "Paragraph" shall mean a portion of this Agreement identified by an arabic numeral or a lower case letter.

g. "Parties" shall mean EPA, the MDNR, and the Settling Parties.

h. "RCRA" shall mean the Solid Waste Disposal Act, as amended, 42 U.S.C. §§6901, et seq. (also known as the Resource Conservation and Recovery Act).

i. "Response Actions" shall have the meaning assigned in CERCLA, but shall relate only to activities

undertaken at the Site in response to actual or threatened releases of hazardous substances from exploration, mining, milling, smelting or transportation of lead and zinc ore or related wastes and associated activities within the Site.

j. "Section" shall mean a portion of this Agreement identified by a roman numeral.

k. "Settling Parties" shall mean those parties identified in Appendix A.

l. "Site" shall mean the Jasper County Superfund Site, encompassing approximately 250 square miles in Jasper County, Missouri, and is generally shown on the map included in Appendix B.

m. "MDNR" shall mean the Missouri Department of Natural Resources, including its departments, agencies, and instrumentalities.

n. "United States" shall mean the United States of America, including its departments, agencies, and instrumentalities.

VI. REIMBURSEMENT OF RESPONSE COSTS

11. a. Within 30 days of the effective date of this Agreement as defined by Paragraph 38, Settling Parties shall pay to the EPA Hazardous Substance Superfund the amount of \$818,340. Payment shall be made to EPA by Electronic Funds Transfer ("EFT") in accordance with current EFT procedures to be provided to Settling Parties by EPA Region VII and shall be accompanied by a

statement identifying the name and address of the party(ies) making payment, the Site name, the EPA Region and Site/Spill ID# 0736, and the EPA docket number for this action. EFT payment shall be made by transfer to:

Transmit to: ABA 043000261 (wire transit #)
Deposit to: EPA Acct #910-9070
For: EPA, Region 7
Kansas City, Kansas
Docket No., Site ID, and Remitter

b. Within 30 days of the effective date of this Agreement as defined by Paragraph 38, Settling Parties shall pay to the MDNR the amount of \$88,395 for future operation and maintenance costs. Payment shall be made by certified or cashier's check to the MDNR and made payable to the "Missouri Department of Natural Resources" and shall be accompanied by a statement identifying the name and address of the party(ies) making payment, the Site name, the EPA Region and Site/Spill ID# 0736, the EPA docket number for this action, and that the destination is the 'Missouri Hazardous Waste Remedial Fund.' Payments to the MDNR shall be sent to:

Timothy Duggan
Assistant Attorney General
Missouri Attorney General's Office
P.O. Box 899
Jefferson City, MO 65102-0899

and, at the same time, copies of the check and transmittal letter shall be sent to:

Project Manager
Missouri Department of Natural Resources
Superfund Division
Hazardous Waste Management Program
P.O. Box 176
Jefferson City, MO 65102-0176

12. a. The total amount to be paid to EPA pursuant to Paragraph 11 of this Agreement shall be deposited in the Jasper County Superfund Site Special Account to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

b. At the time of payment to EPA and the MDNR, each Settling Party shall send notice that such payment has been made to:

Mark Doolan, RPM and Dave Piet, Superfund
EPA Region 7
901 North 5th Street
Kansas City, Kansas 66101

and

David Mosby
Superfund Division
Missouri Department of Natural Resources
P.O. Box 176
Jefferson City, Missouri 65210

VII. FAILURE TO COMPLY WITH AGREEMENT

13. If any Settling Party fails to make any payment under Paragraph 11 to the EPA or the MDNR by the required due date, Interest shall accrue on the unpaid balance through the date of payment.

14. If any amounts due under Paragraph 11 are not paid to the EPA or the MDNR by the required date, Settling Parties shall be in violation of this Agreement and shall pay, as a stipulated penalty, in addition to the interest required by Paragraph 13, \$1,500 to the appropriate party for each day that such payment is late.

15. Stipulated penalties are due and payable within 30 days of the date of demand for payment of penalties by EPA or the MDNR.

a. All payments to EPA under this Paragraph shall be identified as "stipulated penalties" and shall be made by certified or cashier's check made payable to "EPA Hazardous Substance Superfund" when demand for payment of penalties is made by EPA. The check, or a letter accompanying the check, shall identify the name and address of the party(ies) making payment, the Site name, the EPA Region and Site/Spill ID #0736 and the EPA docket number for this action, and for EPA shall be sent to:

EPA Superfund
Mellon Bank
EPA Region 7
P.O. Box 360748M
Pittsburgh, PA 15251

b. All payments to the MDNR under this Paragraph shall be identified as "stipulated penalties" and shall be made by certified or cashier's check made payable to "Missouri Hazardous Waste Remedial Fund" when demand for payment of penalties is made by MDNR. The check, or a letter accompanying the check, shall identify the name and address of the party(ies) making payment, the Site name, the EPA Region and Site/Spill ID #0736 and the EPA docket number for this action, and for the MDNR shall be sent to:

Missouri Department of Natural Resources
Attention: Chief Superfund Division
Hazardous Waste Management Program
P.O. Box 176
Jefferson City, Missouri 65102-0176

c. At the time of payment of any penalties to EPA or the MDNR, each Settling Party shall send notice that such payment has been made to:

Mark Doolan, RPM and Dave Piet, Superfund
EPA Region 7
901 North 5th Street
Kansas City, Kansas 66101

and

David Mosby
Superfund Division
Missouri Department of Natural Resources
P.O. Box 176
Jefferson City, Missouri 65210

16. Penalties shall accrue as provided above regardless of whether EPA or the MDNR has notified Settling Parties of the violation or made a demand for payment, but need only be paid upon demand. All penalties shall begin to accrue on the day after payment is due and shall continue to accrue through the date of payment. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Agreement.

17. In addition to the Interest and Stipulated Penalty payments required by this Section and any other remedies or sanctions available to the EPA or the MDNR by virtue of Settling Parties' failure to comply with the requirements of this Agreement, any Settling Party who fails or refuses to comply with any term or condition of this Agreement shall be subject to enforcement action pursuant to Section 122(h)(3) of CERCLA, 42 U.S.C. §9622(h)(3). If the United States, on behalf of the EPA, or the MDNR brings an action to enforce this Agreement, Settling

Jasper County Site, 122(h) Order, Page 10 of 28

Parties shall reimburse the United States and the MDNR for all costs of such action, including but not limited to costs of attorney time.

18. The obligations of Settling Parties to pay any amounts owed to EPA and MDNR under this Agreement are joint and several. In the event of the failure of any one or more Settling Parties to make the payments required under this Agreement, the remaining Settling Parties shall be responsible for such payments.

19. Notwithstanding any other provision of this Section, EPA may, in its unreviewable discretion, waive payment of any portion of the stipulated penalties payable to EPA that have accrued pursuant to this Agreement. Notwithstanding any other provision of this Section, MDNR may, in its unreviewable discretion, waive payment of any portion of the stipulated penalties payable to MDNR that have accrued pursuant to this Agreement. Settling Parties' payment of stipulated penalties shall not excuse Settling Party from payment as required by Section VI (Reimbursement of Response Costs) or from performance of any other requirements of this Agreement.

VIII. COVENANT NOT TO SUE BY THE EPA AND THE MDNR

20. Except as specifically provided in Section IX (Reservations of Rights), the EPA and MDNR covenant not to sue or to take administrative action against Settling Parties pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§9606 and 9607(a), Section 7003 of RCRA, 42 U.S.C. §6973, and related or comparable state law with regard to the Response Actions at the

Site. With respect to present and future liability, this covenant shall take effect upon receipt by EPA and MDNR of all amounts required by Section VI (Reimbursement of Response Costs) and any amount due under Section VII (Failure to Comply with Agreement). This covenant not to sue is conditioned upon the satisfactory performance by Settling Parties of their obligations under this Agreement. This covenant not to sue extends only to Settling Parties and does not extend to any other person.

IX. RESERVATIONS OF RIGHTS

21. EPA and the MDNR reserve, and this Agreement is without prejudice to, all rights against Settling Parties with respect to all matters not expressly included within the Covenant Not to Sue by EPA and the MDNR in Paragraph 20. Notwithstanding any other provision of this Agreement, EPA and the MDNR reserve all rights against Settling Parties with respect to:

- a. liability for failure of Settling Parties to meet a requirement of this Agreement;
- b. criminal liability;
- c. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;
- d. liability arising from the past, present, or future disposal, release or threat of release of a hazardous substance, pollutant, or contaminant outside the Site;
- e. liability, based upon Settling Parties' ownership and operation of the Site, or upon Settling Parties' transportation, treatment, storage, or disposal, or the arrangement for the transportation, treatment, storage or disposal, of a hazardous substance, or a solid waste at or in connection with the Site, after signature of this Agreement by Settling Parties;

f. Settling Parties' obligations under an EPA Administrative Order on Consent, EPA Docket No. 91-F-0020 (AOC), and EPA's rights to seek injunctive relief, monetary penalties and punitive damages for any violations of said AOC; and

g. liability arising from the past, present or future disposal, release or threat of release of a hazardous substance where such disposal, release or threat of release results from activities other than the exploration, mining, milling, smelting or transportation of lead and zinc ore or related wastes and associated activities within the Site.

22. Nothing in this Agreement is intended to be nor shall it be construed as a release, covenant not to sue, or compromise of any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which EPA may have against any person, firm, corporation or other entity not a signatory to this Agreement.

X. COVENANT NOT TO SUE BY SETTLING PARTIES

23. Settling Parties agree not to assert any claims or causes of action against the United States, the MDNR or their contractors or employees, with respect to the Site or this Agreement, including but not limited to:

a. any direct or indirect claim for reimbursement from the EPA Hazardous Substance Superfund established by 26 U.S.C. §9507, based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

b. any claims arising out of response activities at or in connection with the Site, including but not limited to any claim under the United States Constitution, the Missouri Constitution, the Tucker Act, 28 U.S.C. §1491, the Equal Access to Justice Act, 28 U.S.C. §2412, as amended, or at common law; or

c. any claim against the United States pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§9607 and 9613, relating to the Site.

Except as provided in Paragraph 25 (waiver of claims) and Paragraph 28 (waiver of claim-splitting defenses), these covenants not to sue shall not apply in the event the United States, on behalf of EPA, or the MDNR bring a cause of action or issues an order pursuant to the reservations set forth in Paragraph 21 (c) through (g), but only to the extent that Settling Parties' claims arise from the same response action or response costs that the United States, on behalf of EPA, or the MDNR is seeking pursuant to the applicable reservation.

24. Nothing in this Agreement shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. §9611, or 40 C.F.R. §300.700(d).

25. Settling Parties agree not to assert any claim or causes of action that they may have for all matters relating to the Site, including for contribution, against any person whose liability to the Settling Parties with respect to the Site is based solely on their ownership of residential property. This waiver shall not apply with respect to any defense, claim, or cause of action that a Settling Party may have against any person if such person asserts a claim or cause of action relating to the Site against such Settling Party.

XI. EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION

26. Except as provided in paragraph 25, nothing in this Agreement shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this

Agreement. The preceding sentence shall not be construed to waive or nullify any rights that any person not a signatory to this Agreement may have under applicable law. Except as provided in Paragraph 25, the Parties expressly reserve any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action which they may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto.

27. a. The Parties agree that Settling Parties are entitled, as of the effective date of this Agreement, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§9613(f)(2) and 9622(h)(4), and related or comparable state law, if any, for "matters addressed" in this Agreement. The "matters addressed" in this Agreement are all Response Actions taken or to be taken and all response costs incurred or to be incurred for Response Actions, at or in connection with the Site, by the EPA, MDNR, or by any other person. The "matters addressed" in this Agreement do not include those response costs or response actions as to which the EPA has reserved its rights under this Agreement (except for claims for failure to comply with this Agreement), in the event that the EPA asserts rights against Settling Parties coming within the scope of such reservations.

b. Each Settling Party agrees that, with respect to any suit or claim for contribution brought by it for matters related to this Agreement, it will notify EPA and the MDNR in writing no later than 60 days prior to initiation of such suit or claim. Each Settling Party also agrees that, with respect to any suit or claim for contribution brought against it for matters related to this Agreement, it will notify EPA and the MDNR in writing within 10 days of service of the complaint or claim upon it. In addition, each Settling Defendant shall notify EPA and the MDNR within 10 days of service or receipt of any Motion for Summary Judgment, and within 10 days of receipt of any order from a court setting a case for trial, for matters related to this Agreement.

28. In any subsequent administrative or judicial proceeding initiated by the EPA for injunctive relief, recovery of response costs, or other appropriate relief relating to the Site, Settling Parties shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the covenant not to sue set forth in Paragraph 20.

XII. ACCESS TO INFORMATION

29. Settling Parties shall provide to EPA, upon request, copies of all documents and information within their possession or control or that of their contractors or agents relating to activities at the Site, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information related to the Site.

Confidential Business Information and Privileged Documents

a. Settling Parties may assert business confidentiality claims covering part or all of the documents or information submitted to EPA under this Agreement to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. §9604(e)(7), and 40 C.F.R. §2.203(b). Documents or information determined to be confidential by EPA will be accorded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies documents or information when they are submitted to EPA, or if EPA has notified Settling Parties that the documents or information are not confidential under the standards of Section 104(e)(7) of CERCLA, the public may be given access to such documents or information without further notice to Settling Parties.

b. Settling Parties may assert that certain documents or information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Settling Parties assert such a privilege in lieu of providing documents or information, they shall provide EPA with the following: 1) the title of the document or information; 2) the date of the document or information; 3) the name and title of the author of the document or information; 4) the name and title of each addressee and recipient; 5) a description of the subject of the document or information; and 6) the privilege asserted. However, no documents or information created or generated pursuant to the requirements of this or any other judicial or

administrative settlement with the United States shall be withheld on the grounds that they are privileged. If a claim of privilege applies only to a portion of a document or information, the document or information shall be provided to EPA in redacted form to mask the privileged portion only. Settling Parties shall retain all documents or information that they claim to be privileged until EPA has had a reasonable opportunity to dispute the privilege claim and any such dispute has been resolved in the Settling Parties' favor.

c. Settling Parties may assert business confidentiality claims covering part or all of the documents or information submitted to MDNR under this Agreement to the extent permitted by and in accordance with applicable state law or regulations. Documents or information determined to be confidential by MDNR will be accorded the protection available under state law. However, such state laws or regulations shall not apply to documents or information submitted to EPA.

30. No claim of confidentiality shall be made with respect to any data, including but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or engineering data, or any other documents or information evidencing conditions at or around the Site.

XIII. RETENTION OF RECORDS

31. Until ten (10) years after the effective date of this Agreement, each Settling Party shall preserve and retain all documents or information now in its possession or control, or which come into its possession or control, that relate in any manner to response actions taken at the Site or to the liability of any person for response actions or response costs, at or in connection with the Site, regardless of any corporate retention policy to the contrary.

32. After the conclusion of the document retention period in the preceding paragraph, Settling Parties shall notify EPA at least 90 days prior to the destruction of any such documents or information, and, upon request by EPA, Settling Parties shall deliver such records or documents to EPA. Settling Parties may assert that certain documents or information are privileged under the attorney-client privilege or any other privilege recognized by federal law in accordance with paragraph 29(b). If Settling Parties assert such a privilege, they shall provide EPA with the following: 1) the title of the document or information; 2) the date of the document or information; 3) the name and title of the author of the document or information; 4) the name and title of each addressee and recipient; 5) a description of the subject of the document or information; and 6) the privilege asserted. However, no documents or information created or generated pursuant to the requirements of this or any other judicial or administrative settlement with the United States shall be withheld on the grounds that they are privileged. If a claim of privilege applies only to a portion of a document or information, the document or information shall be provided to EPA in redacted form to mask the privileged portion only. Settling Parties shall retain all documents and information that they claim to be privileged until EPA has had a reasonable opportunity to dispute the privilege claim and any such dispute has been resolved in the Settling Parties' favor.

XIV. CERTIFICATION

33. By signing this Agreement, each Settling Party certifies individually that, to the best of its knowledge and belief, it has:

a. conducted a thorough, comprehensive, good faith search for documents or information, and has fully and accurately disclosed to EPA, all documents or information currently in its possession, or in the possession of its officers, directors, employees, contractors or agents, which relates in any way to the ownership, operation or control of the Site, or to the ownership, possession, generation, treatment, transportation, storage, or disposal of a hazardous substance, pollutant, or contaminant at or in connection with the Site;

b. not altered, mutilated, discarded, destroyed or otherwise disposed of any documents or information relating to its potential liability regarding the Site, after notification of potential liability or the filing of a suit against the Settling Party regarding the Site; and

c. fully complied with any and all EPA requests for information regarding the Site pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§9604(e) and 9622(e).

XV. NOTICES AND SUBMISSIONS

34. Whenever, under the terms of this Agreement, notice is required to be given or a document is required to be sent by one Party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of this Agreement with respect to the EPA, the MDNR

and Settling Parties.

As to the EPA:

Mark Doolan, RPM
US, EPA Region VII
901 North 5th Street
Kansas City, Kansas 66101

As to the MDNR:

David Mosby
Superfund Division
Missouri Department of Natural Resources
P.O. Box 176
Jefferson City, Missouri 65201

As to Settling Parties:

Daniel M. Steinway
Kelley Drye & Warren LLP
1200 19th Street, NW, Suite 500
Washington, DC 20036

XVI. INTEGRATION/APPENDICES

35. This Agreement and its appendices constitute the final, complete and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Agreement. The Parties acknowledge that there are no representations, agreements, or understandings relating to the settlement other than those expressly contained in this Agreement. The following appendices are attached to and incorporated into this Agreement: "Appendix A" is the list of Settling Parties, and "Appendix B" is a map of the Site.

XVII. PUBLIC COMMENT

36. This Agreement shall be subject to a public comment period of not less than 30 days pursuant to Section 122(i) of CERCLA, 42 U.S.C. §9622(i). In addition, a public meeting may

Jasper County Site, 122(h) Order, Page 21 of 28

be requested pursuant to Section 7003 of RCRA. In accordance with Section 122(i)(3) of CERCLA, the EPA may modify or withdraw its consent to this Agreement if comments received disclose facts or considerations which indicate that this Agreement is inappropriate, improper, or inadequate.

XVIII. ATTORNEY GENERAL APPROVAL

37. The United States Attorney General or his designee has approved the settlement embodied in this Agreement in accordance with Section 122(h)(1) of CERCLA, 42 U.S.C. § 9622(h)(1).

XIX. EFFECTIVE DATE

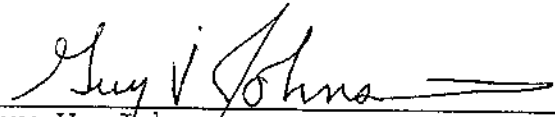
38. The effective date of this Agreement shall be the date upon which EPA issues written notice to the Settling Parties that the public comment period pursuant to Paragraph 35 has closed and that comments received, if any, do not require modification of or withdrawal by the EPA from this Agreement.

IT IS SO AGREED and the UNDERSIGNED PARTIES enter into this Administrative Order on Consent by executing the same.

The UNDERSIGNED PARTY enters into this Agreement, EPA
Docket No. CERCLA-07-2002-0051, relating to the Jasper County
Superfund Site in Jasper County, Missouri:

E.I. du Pont de Nemours and Company

By:



Guy V. Johnson
Corporate Counsel
E. I. du Pont de Nemours and Company
Legal, D-7090-2
1007 Market Street
Wilmington, DE 19898

2/4/02
Date

The UNDERSIGNED PARTY enters into this Agreement, EPA
Docket No. CERCLA-07-2002-0051, relating to the Jasper County
Superfund Site in Jasper County, Missouri:

United States Steel Corporation

By: .



William J. McKim

Assistant General Counsel

- Environmental & Real Estate

c/o United States Steel Corporation

600 Grant Street, Suite 1500

Pittsburgh, PA 15219

January 30, 2002
Date

The UNDERSIGNED PARTY enters into this Agreement, EPA
Docket No. CERCLA-07-2002-0051, relating to the Jasper County
Superfund Site in Jasper County, Missouri:

Kellogg Brown & Root, Inc.

By:

Peter W. Arbour

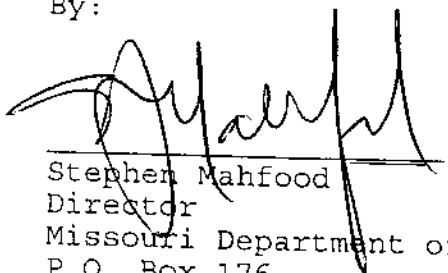
Peter W. Arbour
Senior Vice President - Legal *REP*
Kellogg Brown & Root, Inc.
601 Jefferson Avenue, KT-3442
Houston, TX 77002

JAN. 31, 2002
Date

The UNDERSIGNED PARTY enters into this Agreement, EPA
Docket No. CERCLA-07-2002-0051, relating to the Jasper County
Superfund Site in Jasper County, Missouri:

The State of Missouri

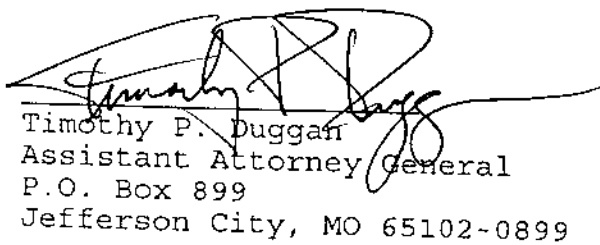
By:



Stephen Mahfood
Director
Missouri Department of Natural Resources
P.O. Box 176
Jefferson City, Missouri 65102

4/17/02
Date

Jeremiah W. (Jay) Nixon
Attorney General




Timothy P. Duggan
Assistant Attorney General
P.O. Box 899
Jefferson City, MO 65102-0899

4/19/02
Date

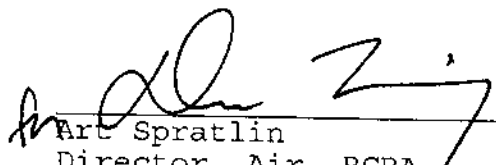
The UNDERSIGNED PARTY enters into this Agreement, EPA
Docket No. CERCLA-07-2002-0051, relating to the Jasper County
Superfund Site in Jasper County, Missouri:

U.S. Environmental Protection Agency


By:


Michael Sanderson
Director, Superfund Division
US Environmental Protection Agency
Region VII
Kansas City, Kansas 66101

5/3/02
Date


Art Spratlin
Director, Air, RCRA
and Toxics Division
US Environmental Protection Agency
Region VII
Kansas City, Kansas 66101

5-3-02
Date

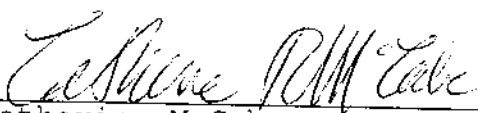

Jane Kloeckner
Sr. Assistant Regional Counsel
US Environmental Protection Agency
Region VII
Kansas City, Kansas 66101

5-1-02
Date

The UNDERSIGNED PARTY enters into this Agreement, EPA
Docket No. CERCLA-07-2002-0051, relating to the Jasper County
Superfund Site in Jasper County, Missouri:

U.S. Department of Justice

By:



Catherine McCabe

Deputy Chief

Environmental Enforcement Section

Environment and Natural Resources Division

7/28/02
Date

By:



Paul Gormley

Trial Attorney

Environmental Enforcement Section

Environment and Natural Resources Division

U.S. Department of Justice

P.O. Box 7611

Washington, DC 20044-7611

7/10/02
Date

APPENDIX A

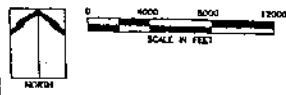
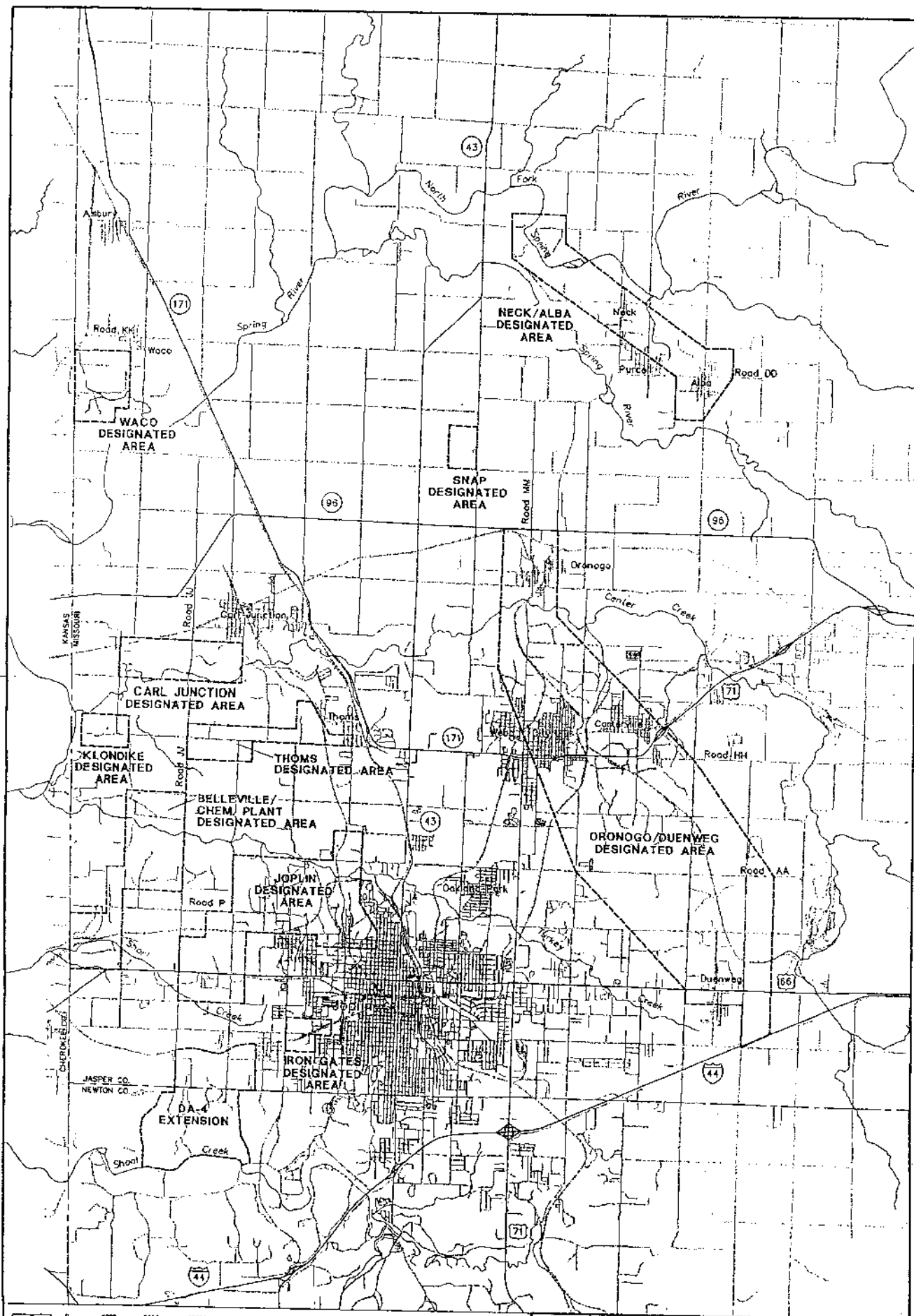
E. I. DUPONT DE NEMOURS
AND COMPANY,
Wilmington, Delaware

UNITED STATES STEEL CORPORATION
Trenton, New Jersey

KELLOGG BROWN & ROOT, INC.
(formerly known as "Brown & Root, Inc.")
Houston, Texas

APPENDIX B

Map of the Jasper County Superfund Site



JASPER COUNTY R/W'S
Jasper County, Missouri
DESIGNATED AREAS
LOCATION MAP

FILE NAME: 30-100
DATE: 12/93
DRAWING NUMBER: 1-1

IN THE MATTER OF THE JASPER COUNTY, TRI-STATE MINING DISTRICT SITE
ADMINISTRATIVE ORDER ON CONSENT 03 MAR 10 AM 11:06
EPA DOCKET NO. CERCLA-07-2002-0051

ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

PUBLIC COMMENT
RESPONSIVENESS SUMMARY

The United States Environmental Protection Agency, Region VII (EPA, Region VII or the Agency) with the concurrence of the United States Department of Justice (DOJ) submitted for public comment an agreement with three responsible parties, E.I. DuPont de Nemours & Company, U.S. Steel Corp., and Kellogg Brown & Root, Inc. (Respondents), for settlement of their liabilities pursuant to Section 122 (h) of the Comprehensive Environmental Response, Compensation, Liability Act of 1980, as amended (CERCLA), 42 U.S.C. Section 9622 (h). The State of Missouri is a party to the settlement agreement, also. The public comment period was open from September 13, 2002 to October 14, 2002 and included a federal register announcement, see 67 Fed. Reg. 58051. Also, Region VII mailed copies of the settlement document to interested parties. Comments were received from Gold Fields Mining Corporation and Blue Tee Corp (collectively herein GF) and ASARCO, Inc.

The Agency provides this Responsiveness Summary to respond to comments. Region VII, DOJ and the State of Missouri have determined that the settlement agreement, EPA Administrative Order on Consent, Docket No. CERCLA-07-2002-0051, (AOC or Order) is supported by the administrative record and the comments received are merely requests for clarification of settlement strategy and how national guidelines were applied by Region VII in negotiation of this settlement. The comments do not indicate that the settlement is inappropriate, improper or inadequate.

EPA has determined that neither the language in the AOC nor the terms of the settlement should be modified. Accordingly, the Agency is sending a notice letter to the Respondents and the AOC will be effective upon receipt of said notice.

Response to Comments:

1. *Comment:* The AOC does not set forth how the three Respondents qualify for a peripheral party settlement under the national EPA guidelines for peripheral party settlements of CERCLA liability.

Response: An AOC is not required to include these facts. Nevertheless, EPA has determined that the three Respondents are eligible for a peripheral party settlement based on a variety of factors, including the relatively minor volume of mining wastes they contributed to the Site compared to the volume of wastes throughout the Site. First, based on ore production records, EPA determined that each Respondent produced less than two percent of the ore when compared to the notified potentially responsible parties (PRPs) at this Site. Second, based on mining leases and other information, EPA concluded that each Respondent operated on-site for less than four years of the 100-year history of mining at the Site. This information has previously

been made available to GF and ASARCO.

2. *Comment:* The AOC does not indicate the total anticipated amount of response costs required to complete response actions at the Site.

Response: An AOC is not required to include these facts. However, there are public documents in which Region VII and the PRPs have estimated total future response costs for the four operable units at this Site. For example, recent draft Feasibility Study documents (prepared by the commenters) have estimated the range of costs for action alternatives for Operable Unit No. 1, Mine and Mill Waste Clean Up, between \$28,872,000 and \$83,745,000. Costs estimates Region VII have developed in Records of Decisions and financial summaries for the other three operable unit response activities are approximately: OU2 (Smelter Waste Residential Yard Clean Up) and OU3 (Mining Waste Residential Yard Clean Up) - \$45,000,000; and OU4 (Alternative Water Supply Remedy) - \$3,000,000.

3. *Comment:* The AOC does not set forth the allocation of responsibility made to determine the settlement amount or the basis for that allocation among the three Respondents.

Response: Since liability under the AOC is joint and several (see Response to Comment 5, infra), the AOC is not required to set forth an allocation among Respondents. However, the settlement amount is based on, among other things, the following considerations:

First, past costs for OU1 were allocated based on percentages of ore produced by the Respondents compared to all other identified PRPs. Future costs for OU1 were allocated based on the acreage of on-site mining wastes located in areas where the Respondents formerly operated or owned mills or mines and a premium was added because of uncertainty. The allocation for Kellogg Brown & Root, Inc. for OU1 future costs was divided in half because its participation in mining/milling was under joint venture with another identified PRP (i.e., Quick Seven joint venture with GF).

Second, future costs of OU4 site-wide institutional controls were allocated to the Respondents based on percentages of ore they produced compared to all other identified PRPs. Other than the costs of institutional controls, the peripheral parties were not allocated any other share of responsibility for OU4 because none of their mining or milling operations were located in the areas being addressed under OU4.

4. *Comment:* The AOC does not identify the amount of the settlement attributed to past costs, specifically oversight costs addressed in a separate AOC issued in 1991.

Response: An AOC is not required to include this information. However, as noted above, Respondents contributed toward EPA's past costs for OU1 based on their percentage of ore production. Oversight costs under the 1991 AOC were not addressed in this AOC. See AOC Par. 21(f).

5. *Comment:* The commenters object to the assertion of joint and several liability.

Response: Liability under Section 107 of CERCLA is joint and several, and the Respondents agreed to the inclusion of this language. See, United States v Hercules, Inc., 247 F.3d 706, 715 (8th Cir. 2001).

6. *Comment:* The commenters suggest that money in the special account where the settlement proceeds will be deposited should be used only for future costs at specific areas within the Jasper County Site.

Response: The settlement proceeds payable to EPA under this AOC will be deposited in the Jasper County Special Account, which was established several years ago with the proceeds from the Eagle-Picher bankruptcy settlement. Pursuant to EPA guidance on special accounts, the funds may be used to conduct response actions or may be transferred to the Hazardous Substance Trust Fund. However, to date all settlement proceeds deposited in that account have been used exclusively for response costs incurred at the Jasper County Site. Settlement funds paid to the State of Missouri will not be deposited into the Jasper County Special Account, but instead will be used by the State for related costs.

Decisions on spending special account monies are made by EPA Region VII and will depend on what response action has the highest priority based on protection of human health, the environment and public welfare. CERCLA provides that a settlement with one PRP reduces the amount of potential liability of the others by the amount of the settlement. See Section 122(h)(4) of CERCLA.

HellerEhrman

ATTORNEYS

October 14, 2002

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16004-0099

Jane Kloeckner
US EPA, Region VII
901 North Fifth Street
Kansas City, Kansas 66101

**Re: Comments on Administrative Order on Consent In the Matter of Jasper
County/Tri-State Mining Area Site, Docket No. CERCLA-07-2002-0051**

Dear Ms. Kloeckner:

The Administrative Order on Consent (AOC) referenced above was executed by EPA, the State of Missouri, DuPont, United States Steel, and Kellogg Brown & Root, three members of a larger group that signed an Administrative Order on Consent to perform a remedial investigation and feasibility study in 1991. Some, but not all of the work required by the 1991 AOC has been completed. This AOC does not release the Settling Parties from the 1991 AOC. Paragraph 21.b. Asarco is one of the members of the larger group and makes the following comments on the current AOC.

First, the AOC is silent upon a number of critical issues that pertain specifically to the non-settling potentially responsible parties (PRPs). EPA has consistently stated that it was negotiating with parties it deemed "peripheral" to develop a settlement. Nothing in this AOC allows assessment of the appropriateness of classifying DuPont, United States Steel and Kellogg Brown & Root as "peripheral parties" as that term is defined in EPA guidance.

Moreover, there is no indication of the total expenditure anticipated to complete the response actions at the Jasper County site, so it is impossible to determine whether the settlement is fair or reasonable. This issue is very important to the non-settling PRPs as it directly affects their potential liability. The basis of the settlement should appear on the face of the agreement so the information is available to other non-settling parties.

Third, the AOC addresses the Respondents' "alleged civil liability" at the site for both past and future response costs. Paragraph 9. Nowhere does the agreement identify the amount of the settlement attributed to past costs, specifically oversight costs addressed in the 1991 AOC. This information is important because, again, to the extent the settling parties pay oversight costs, the amount left for the non-settling parties to pay decreases. This defect should be cured.

HellerEhrman
ATTORNEYS

Jane Kloeckner
October 14, 2002
Page 2

In addition, Asarco offers the following specific comments:

Paragraph 6 in the Background section states that the Settling Parties are "jointly and severally liable" for response costs incurred and to be incurred at the Site. There is inadequate basis in both this AOC and in the administrative record to reach this conclusion. Asarco specifically objects to the inclusion of this statement without basis in the AOC, and will continue to resist having any joint and several liability designation applied to the remaining non-settling PRPs at the Jasper County Site.

Paragraph 12 requires EPA to deposit the money it receives under this AOC in a segregated account, but does not require EPA to use the money for Jasper County response actions. Any funds received in exchange for a release from liability at the Jasper County Site should be restricted to use for response actions at the Site. Similarly, the State should be required to designate the funds it receives for Jasper County activities.

Thank you for the opportunity to comment on this AOC.

Very truly yours,



Leslie C. Nellerme

cc: Don Robbins



October 14, 2002

TERRANCE GILBERT FAYE
Of Counsel
Tfaye@westel.com

E. Jane Kloeckner, Esq.
U.S. EPA, Region VII
901 North Fifth Street
Kansas City, Kansas 66101


Via Facsimile Transmittal
and First Class Mail

**Re: In the Matter of Jasper County/Tri-State Mining Area Site
Administrative Order on Consent
Docket No. CERCLA -07-2002-0051**

Dear Ms. Kloeckner:

Gold Fields Mining Corporation and Blue Tee Corp. (collectively "Gold Fields") have received and reviewed the above-referenced Administrative Order on Consent ("AOC") executed by the U.S. Environmental Protection Agency, Region VII ("EPA"), the State of Missouri, E. I. DuPont de Nemours & Company, U.S. Steel Corp. and Kellogg Brown & Root, Inc. As you are aware these three potentially responsible parties ("PRPs") are members of a larger group of PRPs that signed an administrative order on consent to perform a remedial investigation and feasibility study for the Jasper County Site ("Site") in 1991. According to Paragraph 21b, this latest AOC does not release the Settling Parties from the earlier 1991 administrative order. Gold Fields is one of the members of the larger PRP group and herein provides comments on the above-referenced AOC.

First, Gold Fields notes its concern for the fact that the AOC is silent as to a number of critical issues that pertain specifically to the non-settling PRPs. EPA has consistently stated that it was negotiating with parties it deemed "peripheral" to develop a settlement. Nothing in this AOC allows assessment of the appropriateness of classifying these three PRPs as "peripheral parties" as that term is defined in EPA guidance.



Secondly, there is no indication of the total expenditure anticipated to complete the response actions at the Site, so it is impossible to determine whether the settlement is fair or reasonable. This issue is very important to the non-settling PRPs as it directly affects their potential liability. The basis of the settlement should appear on the face of the agreement so the information is available to other non-settling parties.

Even more distressing to Gold Fields is the fact that there is no assessment or allocation of the settlement among the three PRPs. EPA has known for quite some time that Gold Fields has requested the amount of the settlement attributed to Kellogg Brown & Root. Neither EPA nor Kellogg Brown & Root has been forthcoming about the negotiations or the amount of the settlement attributed to that PRP. The amount is relevant to Gold Fields since liability for both Kellogg Brown & Root and Gold Fields in the Neck Alba area is based upon a joint venture of those two companies. For purposes of further Site negotiations with Gold Fields, it will be necessary for EPA to provide that information to Gold Fields. Such information should be openly displayed in the AOC.

Third, the AOC addresses the Respondents' "alleged civil liability" at the Site for both past and future response costs. However, nowhere does the AOC identify the amount of the settlement attributed to past costs, specifically oversight costs addressed in the 1991 AOC. This information is important because, again, to the extent the settling parties pay oversight costs, the amount left for the non-settling parties to pay decreases. This defect should be cured.

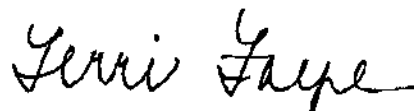
In addition, Gold Fields offers two additional specific comments:

1. Paragraph 6 in the Background section states that the Settling Parties are "jointly and severally liable" for response costs incurred and to be incurred at the Site. There is no adequate basis in either this AOC or the administrative record to reach this conclusion. Gold Fields specifically objects to the inclusion of this statement without basis in the AOC, and will continue to resist having any joint and several liability designation applied to the remaining non-settling PRPs at the Site.
2. Paragraph 12 requires EPA to deposit the money it receives under this AOC in a segregated account, but does not require EPA to use the money for Jasper County response actions. Any funds received in exchange for a release from liability at the Site should be restricted to use for response actions at the Site. Similarly, the State should be required to designate the funds it receives for Jasper County activities. Furthermore, as in the case of Kellogg Brown & Root, where

liability is based upon a joint venture only in the Neck Alba area, the money received should be attributed totally to work in that particular area.

Thank you for the opportunity to comment on this AOC. Please do not hesitate to contact me to discuss these comments in more detail.

Sincerely,

A handwritten signature in cursive script, reading "Terrance Gileo Faye".

Terrance Gileo Faye

TGF/ps

cc: G. Uphoff